



Supreme Court of the United States

October Term, 1965.

No. _____

HUGO DeGREGORY, Appellant

v.

ATTORNEY GENERAL OF THE
STATE OF NEW HAMPSHIRE, Appellee

PRELIMINARY STATEMENT

Appellee, Attorney General of the State of New Hampshire, in conformity with Rule 16 of this Honorable Court, respectfully submits the following Motion to Dismiss the appeal of Hugo DeGregory, Appellant, and/or to Affirm the decision of the New Hampshire Supreme Court, 209 A. 2d 712, (1965), to be reported in Volume 106, New Hampshire Reports, on the grounds specified in said Motion.

STATEMENT OF THE CASE

The various Attorneys General of the State of New Hampshire, pursuant to legislative mandate, acting as a legislative fact-finding committee, have, since 1953, extensively investigated the subject of subversion, and particularly communism as it relates to the State of New Hampshire. The overriding motive for said legislative mandate is the self-preservation and protection of the State which can best be accomplished by a fact-finding committee, in this instance the Attorney General, garnering relevant data to pre-

sent to the Legislature. Said data shall be the basis for possible future legislation to effectuate the self-preservation and protection of the State.

Since June 12, 1955 the Appellant has been summonsed as a witness to testify as to his knowledge of past and present membership in and activities of the Communist Party in and affecting New Hampshire. The Supreme Court of New Hampshire and the United States Supreme Court have always upheld the actions of the Attorney General and the validity of the investigatory statutes while overruling Appellant. In spite of the many previous court rulings Appellant continues to assume a belligerent posture and refuses to testify as requested.

Pursuant to the decisions of the courts in *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S.Ct. 137 the Appellant on November 12, 1963 purged himself of contempt by appearing at the Hillsborough County Court House and answering in the negative the question "Are you presently a member of the Communist Party?" This is the only answer Appellant has ever given to the Attorneys General.

Because of the need for facts which could only be elicited from Appellant by extensive and detailed questioning concerning Communist Party activities and membership in and affecting New Hampshire, present and past, further proceedings under the continuing investigatory authority of the delegated Legislative Committee were initiated on November 22, 1963. Appellant appeared and refused to answer certain questions propounded to him on the theory that the Attorney General had not laid a foundation upon which he could initiate his investigation and base his examination of Appellant. Whereupon the matter, as required by RSA 491:20, was transferred to the Superior Court. On May 20, 1964 Appellant was held in contempt of court for his failure to answer questions propounded to him by the Attorney

General. The Court held that the Attorney General had laid the proper foundations to enable him to interrogate Appellant regarding the communist movement in New Hampshire.

A reserved case was filed and entered in the New Hampshire Supreme Court on October 22, 1964. The New Hampshire Supreme Court affirmed the decision of the Superior Court of May 27, 1964. This matter is now before the United States Supreme Court pursuant to Title 28, U.S. Code, §1257(2).

MOTION TO DISMISS AND/OR AFFIRM

**I. NO SUBSTANTIAL FEDERAL QUESTION
IS INVOLVED**

Now comes the Appellee, Attorney General of the State of New Hampshire, and respectfully moves that the appeal of Hugo DeGregory, Appellant, as more particularly described in the Jurisdictional Statement filed by Appellant with this Honorable Court, be dismissed and/or the judgment of the Supreme Court of New Hampshire in 106 N.H. ___, 209 A.2d 712 be affirmed on the grounds that no substantial Federal question is involved.

A. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED IN THE DECISION OF THE NEW HAMPSHIRE SUPREME COURT, AFFIRMING APPELLANT'S CONTEMPT CITATION, IN THAT THIS HONORABLE COURT HAS, ON BASICALLY THE SAME FACTS, DISMISSED A PRIOR APPEAL OF APPELLANT AND AFFIRMED THE DECISION OF THE NEW HAMPSHIRE SUPREME COURT WHICH DECIDED THE SAME ISSUE AS RAISED IN THIS APPEAL AS WELL AS OTHER ISSUES.

This Honorable Court affirmed the decision of the New Hampshire Supreme Court whereby Appellant raised simi-

lar and broader issues of law than herein presented. *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S.Ct. 137 (1961) Previously Appellant raised the following issues: The constitutionality on its face of the New Hampshire statute, RSA 588, and its specific application to Appellant; the limitation of *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L.ed. 640, 76 Sup. Ct. 477 (1956) on State action in the area of subversive activities; the grant of immunity to Appellant in relation to his personal rights under the 5th Amend. of the U. S. Constitution. The only issue raised in the present case is the constitutionality of New Hampshire RSA 588 as applied by the New Hampshire Court on the record of the case. The unconstitutionality of said statute on its face is not, nor never has been raised.

Defendant's Brief—N. H. Supreme Ct., p. 3: (*Maynard v. DeGregory*, 106 N.H. ___, 209 A 2d 712, Dec'd. April 30, 1965)

"In view of this Court's previous ruling on the statute here involved (*Wyman v. De Gregory*, 103 N.H. 214), defendant is not relitigating here the issue of whether R.S.A. Chapter 588:8-a is unconstitutional on its face. We are arguing that the power of the Attorney General under the statute is limited, and that on the record, he has exceeded the permissible limits in seeking to question defendant in this proceeding. . . ."

Besides the appointment of a new Attorney General the only different fact present in the present proceeding as distinguished from the prior proceedings is the passage of time occasioned solely by Appellant in the exercise of his appellate rights and privileges. Previously Appellant has used the courts as a sword to cut off further State action. DeGregory's appellate process having been exhausted by a judicial decision upholding State action, he has now resorted

to using the same courts as a shield to bar State action. The specific issue raised herein not being a substantial federal question and having been previously answered by this Honorable Court, the time is now overdue when the merry-go-round must stop and the Legislature be permitted to fulfill its proper function.

B. NO FEDERAL QUESTION IS PRESENTED BY THE DECISION OF THE NEW HAMPSHIRE LEGISLATURE TO APPOINT THE ATTORNEY GENERAL AND HIS STAFF AS A LEGISLATIVE INVESTIGATING COMMITTEE TO INQUIRE AS TO SUBVERSIVE ACTIVITIES IN AND AFFECTING THE STATE OF NEW HAMPSHIRE; NOR IS THERE QUESTION THAT THE INFORMATION SOUGHT BY THE ATTORNEY GENERAL WAS IN FACT DESIRED BY THE LEGISLATURE.

Self-preservation is a basic function of government in our democratic form of society. *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 19, 7 L.ed 2d 86, 82, S. Ct. 137; *Dennis v. U.S.*, 341 U.S. 494, 95 L.ed. 1137, 71 Sup. Ct. 857; *Gitlow v. New York*, 268 U.S. 652, 69 L.ed. 1138, 45 Sup. Ct. 625. The State has the right to defend itself from subversion in the manner provided by the New Hampshire Legislature. *Wyman v. DeGregory*, 103 N.H. 214, 368 US 19, 7 L ed 2d 86, 82 S. Ct. 137; *Wyman v. Uphaus*, 101 N.H. 139, 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1960). Fact-finding investigation by a State Legislature in furtherance of a legitimate end is proper and necessary to form a basis of knowledge and fact whereby the Legislature can serve its function of review, repeal, amendment and enactment of legislation. *Kilbourn v. Thompson*, 103 U.S. 168, 26 L.ed. 377, *McGrain v. Daugherty*, 273 U.S. 135, 71 L.ed. 580; *Sinclair v. U.S.*, 279 U.S. 263, 73 L.ed. 692, 49 S. Ct. 268; *Jurney v. MacCracken*, 294 U.S. 125, 79 L.ed. 802, 55 S. Ct. 375.

The question of whether or not to be informed as to the existence of subversion and communism as it affects the security of the State of New Hampshire is a matter of legislative and not judicial determination. *Wyman v. DeGregory*, 103 N.H., 214, 368 U.S. 19; 7 L ed 2d 86, 82, S. Ct. 137. *Uphaus v. Wyman*, 101 N.H. 139, 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1960). There can be no doubt that the Legislature still wishes to be informed on these subjects.

Wyman v. Uphaus, 101 N.H. 139, 140 (1957)

"The legislative history (of New Hampshire Laws 1955, Chapter 197) makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions."

The status of the Attorney General acting as a legislative investigating committee with certain time limitation was changed by the legislature to that of a continuously operative body. N. H. Laws 1957, Ch. 178, p. 213.

On Wednesday, July 10, 1957, the General Court of New Hampshire under suspension of the Rules adopted by more than a two-thirds vote (275—24 in the House; 16—6 in the Senate) a Resolution to the effect that the General Court authorized the questions put and wanted and continues to want the information which is sought.

N.H. Laws 1957, Chapter 347, p. 538:

"JOINT RESOLUTION RELATIVE TO INTERPRETATION OF LEGISLATIVE INTENT ON SUBVERSIVE ACTIVITIES.

Whereas, the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the general court pursuant to law, and

Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

Whereas, in decreeing the questions put to Sweezy were put without authority, the United States Supreme Court on June 17, 1957, stated that,

'The lack of any indication that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority.'

Now therefore be it

Resolved by the Senate and House of Representatives in General Court convened:

THAT this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this state, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court ' . . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon

which the Legislature wanted to be informed when it initiated this inquiry.'

[Approved July 11, 1957.]"

Thereafter the Legislature continually has evidenced a desire to be informed by the Attorney General of subversive activity in and affecting New Hampshire. N.H. Laws, 1961, Ch. 224:1, p. 33, Ch. 225:1, p. 402; N.H. Laws 1963, Ch. 198:1, p. 201, Ch. 199:1, p. 298; N.H. Laws 1965, Ch. 239, Ch. 282.

C. NO FEDERAL QUESTION IS PRESENTED BY THE FOUNDATIONS LAID BY THE ATTORNEY GENERAL WITH RESPECT TO THE SUBJECT MATTER UNDER INVESTIGATION AND APPELLANT'S RELATION THERETO.

The provisions of N.H. RSA 588:8-a (supp) require that in order to question Appellant the Attorney General must establish (1) that he has information which he deems reasonable or reliable relating to violations of the provisions of RSA 588 and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

Even a cursory reading of *The Report of the Attorney General to the New Hampshire General Court*, (January 5, 1955) would indicate that Communist Party activity has centered in and affects the State of New Hampshire. There can be no dispute that the Communist movement exists today and its goal is the overthrow of our democratic form of government. The Communist movement has played a dominant role in the foreign policy and internal security of the United States since the close of World War II. *Barenblatt v. U.S.*, 360 U.S. 109, 128, 129; 3 L ed 2d 1115, 79 S. Ct. 1081; *Wyman v. DeGregory*, 103 N.H. 214, 368 U.S. 197 L ed 2d 86, 82 S. Ct. 137; *Watkins v. U.S.*, 354 U.S. 178 1 L ed 2d 1273, 77 S. Ct. 1178; *Gibson v. Florida Legis-*

lative Committee, 372 U.S. 539, 9 L ed 2d 929, 83 S. Ct. 889. One need only pick up a newspaper or turn on a newscast to be acquainted with Communism and its heinous goals. It would be totally unrealistic, in light of the aforementioned principles, to hold that the Attorney General did not have reasonable or reliable information as to the existence of the Communist movement. See *Wyman v. DeGregory*, 103 N.H. 214 368 U.S. 19, 7 L. ed 2d 86, 82 S. Ct. 137.

It is not incumbent upon the legislative fact-finding committee to establish on the record to Appellant's satisfaction that there was probable cause that he violated the provisions of N.H. RSA 588. It need only be shown that there is a nexus or relationship between the subject under inquiry and the witness upon which to base the inquiry. *Uphaus v. Wyman*, 360 U.S. 72, 78-80; 3 L ed 2d 1090, 79 S. Ct. 1040; *Sweezy v. Wyman*, 100 N.H. 103, 108; *Wyman v. DeGregory*, 103 N.H. 214, 216, 368 U.S. 19 7 L ed 2d 86, 82 S. Ct. 137. The Attorney General has clearly established such a nexus, in that he has reasonable and reliable information of Appellant's participation in the Communist Party, as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. *The Report of The Attorney General to New Hampshire General Court*, January 5, 1955) pp. 204-206. Also see, *Wyman v. DeGregory*, 368 U.S. 19, 7 L.ed. 2d 86, 82 S. Ct. 137

D. NO FEDERAL QUESTION IS PRESENTED BY THE FOUNDATION LAID BY THE ATTORNEY GENERAL WITH RESPECT TO APPRISING APPELLANT OF THE TOPIC UNDER INQUIRY AND THE CONNECTIVE REASONING WHEREBY THE PRECISE QUESTIONS RELATE TO IT.

It is "Black Letter Law" that the Appellant should be apprised of the topic under inquiry and the connective reasoning whereby the precise questions relate to it; however, the matter if indisputably clear need not be stated for the rec-

ord. *Barenblatt v. U.S.*, 360 U.S. 109, 124 3 L ed 2d 1115, 79 S. Ct. 1081; *Watkins v. U.S.*, 354 U.S. 178, 214, 215, 1 L ed 2d 1273, 77 S. Ct. 1178

Nowhere in the record does Appellant claim he is unaware of the topic under investigation or the reason for his interrogation. It would be totally unrealistic for Appellant to claim otherwise in view of his long controversy with the Attorney General, which has taken him through the New Hampshire and U.S. Supreme Courts on numerous occasions, and in view of the record of the instant case. *Transcript of Attorney General's Hearing November 22, 1963*, pp 1-4; *Trial Transcript*, May 20, 1964, pp 2-19; *The Report of the Attorney General to the New Hampshire General Court*, January 5, 1955.

E. NO FEDERAL QUESTION IS PRESENTED IN REGARD TO THE TESTS EMPLOYED BY THE NEW HAMPSHIRE COURTS IN DETERMINING THE PROPRIETY OF THE ACTION OF THE ATTORNEY GENERAL RELATIVE TO APPELLANT.

The New Hampshire Supreme Court has long been involved in the area of subversive activities. *Nelson v. Wyman* 99 N.H. 33 (1954); *Wyman v. Uphaus* 100 N.H. 436 (1957); *Wyman v. Sweezy* 100 N.H. 103 (1956); *Kahn v. Wyman* 100 N.H. 245 (1956); *Wyman v. Uphaus* 101 N.H. 139 (1957); *Wyman v. DeGregory* 101 N.H. 171 (1957); *Wyman v. Uphaus* 102 N. H. 461 (1960); *Wyman v. DeGregory* 103 N. H. 214 (1961); *Maynard v. DeGregory* 106 N.H.—209 A 2d 712 (decided April 30, 1965).

The United States Supreme Court has clearly advised the New Hampshire Supreme Court as to the appropriate tests to be employed in evaluating the propriety of the Attorney General's action. *Sweezy v. Wyman* 354 U.S. 234, 1 L ed 2d 1311, 77 S.Ct. 1203 (1957); *Uphaus v. Wyman* 355 U.S. 16, 2 L ed 2d 22, 78 S. Ct 57 (1957).

It is abundantly clear that the New Hampshire Supreme Court has previously employed the proper tests to determine the validity of the Attorney General's action as a legislative fact finding committee. *Uphaus v. Wyman* 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1959); *Wyman v. DeGregory* 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137 (1961). (both decisions upheld state action).

There can be no doubt that in the present matter the New Hampshire Supreme Court applied to the facts the appropriate legal tests as they have done in the past. The Court has examined the nature of the subject under inquiry and the relation of Appellant thereto. It thereupon weighed this state action against the constitutional rights of the Appellant and upheld the state action.

Maynard v. DeGregory, 106 N.H., 209 A 2d 712 (Dec'd. April 30, 1965)

"This exercise by the state of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been 'pressed, in this instance, to a point where it has come into fatal collision with the over-riding constitutionally protected rights' of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81."

II. THE CASES OF AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN V. SUBVERSIVE ACTIVITIES CONTROL BOARD; AND VETERANS OF THE ABRAHAM LINCOLN BRIGADE V. SUBVERSIVE ACTIVITIES CONTROL BOARD ARE NOT CONTROLLING.

Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board 380 U.S. 503 and *American Committee for Protection of Foreign Born v. Subversive Activities Control Board* 380 U.S. 59 do not deal with legislative

investigations but solely with the area of registration. The aforementioned cases do not dispute the proposition espoused in *Gibson v. Florida Legislative Investigation Committee* 372 U.S. 539 9 L ed 2d 929, 83 S. Ct. 889 that the basic nature of the Communist Party renders it a proper and permissible subject of constant scrutiny by the Legislature. They hold only that in order to require registration by a "Communist Front organization" as defined under §7 of the Subversive Activities Control Act, 64 Stat. 987, 993, 50 U.S.C., §786 requires a showing of present involvement of the organization to be dealt with.

It is axiomatic that the basis for requiring registration, and/or the denial or granting of a license requires a relation to present activity of the party involved; on the other hand, the legislative fact-finding committee need only show a proper subject to investigate and, that there is a nexus with it and the witness either past or present. In registration the principal object of control must relate to present activity, the principal object is not the communist movement but the "Front organization". In this legislative fact-finding investigation the principal object of control is the Communist movement and not the witness. The inherent nature of the communist movement renders it a permissive area of legislative inquiry. *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 9 L ed 2d 929, 83 S. Ct. 889 (1953) One would have to close his eyes to reality to say that communism was a stale subject and could not be investigated without a further showing of proof of its presence on today's political, social, and economic scenes. Would Appellant have the Attorney General give evidence of the Berlin Wall; Cuban Missile Sites; the dead and wounded in Viet Nam; the Alger Hiss, Sobel and Able spy trials; the hidden microphones in our embassies and government buildings? The law does not require the State to investigate and act only when the tentacles of communist aggression have infiltrated into our very homes. *Wyman v. DeGregory* 103

N.H. 214, 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137. It is beyond dispute that the nature of the communist movement coupled with *The Report of the Attorney General to the New Hampshire General Court January 5, 1965* serves as a proper basis for the Attorney General to carry on his present subversive investigation for the Legislature.

A. NO FEDERAL QUESTION IS INVOLVED IN THE DEMAND FOR THE PARTICULAR INFORMATION REQUESTED BY THE ATTORNEY GENERAL.

Once the proper foundations have been laid to examine a witness, the scope of interrogation is limited only by the requirement of relevancy. *U.S. v. Orman*, 207 F. 2d. 148 (1953); *U.S. v. Josephson*, 165 F. 2d. 82 (1947); *Rumely v. U.S.*, 345 U.S. 41 97 L ed 770, 73 S. Ct. 543 (1953); *Barenblatt v. U.S.*, 109, 3 L. ed 2d 1115, 79 S. Ct. 1081; *McGrain v. Daugherty*, 273 U.S. 360 135 71 L. ed 580 (1927); *In re Chapman* 166 U.S. 661 41 L. ed. 1154 (1897). See: 33 *BU Law Review* 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committee." The term "relevant" as here used is broader than in the trial of a case and encompasses inquiry, the answer to which would be reasonably concerned with the main object of the investigation. *U.S. v. Orman*, 207 F. 2d. 148, 153; *Sinclair v. U.S.*, 279 U.S. 263, 299, 73 L. ed. 692, 49 S. Ct. 268.

The questions propounded to Appellant, *trial transcript*, pp. 20-31, relate to the main topic of inquiry. (i.e. the Communist movement). Appellant contends that no inquiry of past events is permissible or relevant. Such reasoning is purely fallacious. The obvious starting point of the Attorney General's inquiry is to determine what subversive activity and who were the parties involved therein that related to New Hampshire. Such inquiry has been held permissible. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78. A knowledge of the past is necessary to lay the cornerstone for future study.

Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 68, 6 L. ed. 625, 81 S. Ct. 1357 (1961).

"Where the current character of an organization and the nature of its connection with others is at issue, of course past conduct is pertinent. Institutions like other organisms, are predominately what their past has made them. History provides the illuminating context within which the implications of present conduct may be known."

CONCLUSION

The New Hampshire Supreme Court in deciding the issues raised properly applied the law espoused in *Sweezy v. Wyman*, 354 U.S. 234, 1 L. ed. 2d 1311, 77 S. Ct. 1203; *Gibson v. Florida Legislative Investigating Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S. Ct. 889; *Uphaus v. Wyman*, 360 U.S. 72, 3 L. ed. 2d 1090, 79 S. Ct. 1040 and the cases cited in its opinion. (*Maynard v. DeGregory*, 106 N.H. 209 A. 2d. 712 to the facts of this case in holding that the interest of the people had not been pressed to the point of fatal collision with Appellant's constitutionally protected rights. Again this Honorable Court is called upon to rule on an issue which is based on almost identical facts which it has previously decided. *Wyman v. DeGregory*, 368 U.S. 19. 7 L. ed. 2d 86, 82 S. Ct. 137. How long will Appellant be permitted to burden the courts with these dilatory tactics under the guise of proper appellate process?

For the several reasons argued herein the Appellee respectfully requests that Appellant's appeal be dismissed and the decision of the New Hampshire Supreme Court upholding Appellant's contempt citation be affirmed.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

By: William Maynard, Attorney General

R. Peter Shapiro, Assistant Attorney General

Joseph F. Gall, Special Assistant

September 8, 1965

Appendix A

Merrimack,
No. 4890.

LOUIS C. WYMAN, *Attorney General*

v.

HUGO DEGREGORY.

Argued December 6, 1960.

Decided March 20, 1961.

1. Laws 1957, *c.* 178, *s.* 2 directing the Attorney General whenever he has information which he deems reasonable or reliable relating to violations of the provisions of the subversive activities act (RSA ch. 588) to make full and complete investigation thereof and report the results to the General Court with his recommendations for legislation does not require that there must be a violation of the Act before the legislative investigation can be conducted.
2. The fact that previous legislation (Laws 1953, *c.* 307, and Laws 1955, *cc.* 197, 340) authorizing the Attorney General to conduct investigation of subversive activities contained the words "to determine whether subversive persons . . . are presently located within the state" and the subsequent enactment (Laws 1957, *c.* 178, *s.* 2) did not contain that language does not restrict the powers of the Attorney General under the latter statute to investigations of only violations of the subversive activities act (RSA ch. 588).
3. Where the Attorney General has reasonable and reliable information relating to violations of the subversive activities act (RSA ch. 588) he is authorized by Laws 1957, *c.* 178, *s.* 2 to ask the witness, previously granted immunity in accordance with Laws 1959, *c.* 279, the ques-

tion whether he is presently a member of the Communist Party, and upon the witness' refusal to answer when so directed by the Superior Court he may be confined for civil contempt under the provisions of RSA 491:19, 20.

4. Such inquiry is pertinent and is not violative of the First Amendment to the Constitution of the United States; nor does such investigation violate the separation of powers provision of the State Constitution (Pt. I, *Art. 37th*).

PETITION, by the Attorney General under RSA 491:19, 20 for an order to compel compliance by the defendant with a subpoena served upon him on February 2, 1960 in a legislative investigation of subversive activities conducted by the Attorney General pursuant to Laws 1957, c. 178, s. 2, effective June 14, 1957, which now appears as RSA 588:8-a (supp).

The defendant, both at the investigation conducted by the Attorney General and at the hearing conducted by the Superior Court on June 28, 1960, was requested to answer the question: "Are you presently a member of the Communist Party?" The defendant had previously on February 8, 1960 been granted immunity pursuant to Laws 1959, c. 279. In the present proceeding the defendant has not claimed the privilege against self-incrimination in refusing to answer this question. Upon the defendant's continued refusal to answer the question he was adjudged in contempt by the Superior Court and ordered committed. The Trial Court refused to admit the defendant to bail and this issue was argued before this court on July 14, 1960, and the defendant was ordered released on bail on July 19, 1960, pending the present appeal. *Wyman v. DeGregory*, 102 N. H. 564.

The defendant's exceptions to the Court's order of committal were reserved and transferred by *Morris, J.*

Louis C. Wyman, Attorney General (by brief and orally), *pro se*.

James C. Cleveland and Howard S. Whiteside (of Massachusetts) (*Mr. Whiteside* orally), for the defendant.

PER CURIAM. The resolution of the questions in this appeal has been held in abeyance following the oral argument awaiting receipt of certain opinions pending in the Supreme Court of the United States. Two of such opinions recently decided on February 27, 1961 are No. 37 *Wilkinson v. United States* and No. 54 *Braden v. United States*.

The defendant's committal for civil contempt for failure to answer the question "Are you presently a member of the Communist Party?" originates under the provisions of RSA 588:8-a (supp) (Laws 1957, c. 178, s. 2). The pertinent part of that statute reads as follows: "588:8-a. ATTORNEY GENERAL. At any time when the attorney general has *information which he deems reasonable or reliable relating to violations of the provisions of this chapter* he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. . . ." (Emphasis supplied).

It is the defendant's contention that the present statute no longer permits the Attorney General "to determine whether subversive persons . . . are presently located within this state" since that language which appeared in the previous legislation (Laws 1953, c. 307 and Laws 1955, cc. 197 and 340) does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. [It is argued that the Attorney General is now confined to investigating only "vio-

lations" of RSA ch. 588 and therefore there is no basis for investigating subversive persons or for the investigation of the defendant.

We think it is clear from the history of the legislation in this field in this state that that was not the intent of the Legislature and that it was not what the Legislature said. RSA 588:8-a (supp). This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information "relating" to violations of the provisions of RSA ch. 588. The statute specifically provides that the results of the investigation shall be reported to the Legislature together with the Attorney General's "recommendations, if any, for legislation." This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required.]

The definitions of a "subversive person" and a "subversive organization" in RSA 588:1 as supplemented by specific tests for determining what constitutes participation in a subversive organization by RSA 588:3-a (supp), Laws 1955, c. 181, indicate no purpose to discontinue the legislative investigation. *Wyman v. Uphaus*, 102 N. H. 461, 463. While it is true that the emphasis has been changed from an investigation of the location of subversive persons to those who have taken some active part as members or by participation in an alleged subversive organization (RSA 588:3-a (supp)), the purpose to continue the investigation is not in doubt. *Wyman v. Uphaus*, 102 N. H. 461, 463. See Sixth Report of N. H. Judicial Council, 48, 47 (1956) and particularly recommendation 5. Our decision in *Uphaus v. Wyman*, 102 N. H. 517, 518, did not say that legislation was limited to investigations of violations of law.

[There are those who think that such a legislative investigation may be pointless, dangerous and ineffective (particu-

larly on a state basis) and there are others who think it desirable and necessary. But the wisdom or lack of wisdom in authorising and financing such an investigation still remains a matter for legislative rather than judicial determination.] *Uphaus v. Wyman*, 81 S. Ct. 153 (1960); No. 54 *Braden v. United States*, and No. 37 *Wilkinson v. United States*, both decided February 27, 1961.

The evidence and the exhibits convinced the Trial Court, as they do this court, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588, which provided a valid and relevant basis for the investigation of the defendant. The question that he was asked "Are you presently a member of the Communist Party?" is a pertinent one (*Barenblatt v. United States*, 360 U. S. 109, 125); there is no doubt that the defendant and his counsel understood it and that, in spite of divided opinions, it does not violate First Amendment rights. No. 54 *Braden v. United States*, No. 37 *Wilkinson v. United States, supra*.

The contention that such investigation violates the separation of powers of our Constitution (Const. Pt. I, Art. 37th) has already been decided adversely to the defendant in *Wyman v. Uphaus*, 102 N. H. 461. See *Nelson v. Wyman*, 99 N. H. 33. The proposition that the Superior Court had no authority under RSA 491:19, 20 to find the defendant in civil contempt because the legislative committee is not an "official or board" within the meaning of that statute is without merit. *State v. Matthews*, 37 N. H. 450, 453. See *Wyman v. Uphaus*, 102 N. H. 461.

Under the majority opinions of the Supreme Court of the United States and under the decisions of this court we can find no constitutional infirmity in the order of civil contempt issued by the Trial Court.

Exceptions overruled.

WHEELER, J., did not sit; DUNCAN, J., dissented.

DUNCAN, J. *dissenting*: The proceedings now before the court are distinct from those considered in *Wyman v. DeGregory*, 100 N. H. 163 and 101 N. H. 171, having been instituted under a more recent statute. Laws 1957, c. 178, s. 2. See *Wyman v. DeGregory*, 102 N. H. 564. Ostensibly the 1957 statute was enacted to provide the Attorney General with some semblance of permanent authority, in place of the temporary investigatory powers conferred upon him as a legislative committee by earlier acts and resolutions. Laws 1953, c. 307; Laws 1955, cc. 197, 340. The bald fact is that in revising the statute the Legislature struck out the earlier direction "to determine whether subversive persons . . . are presently located within this state" (Laws 1953, c. 307, *supra*) upon which the validity of the prior investigation depended under the decision. See *Nelson v. Wyman*, 99 N. H. 33, 38, 39; *Wyman v. Sweezy* 100 N. H. 103, 110, 113; *Wyman v. Uphaus*, 100 N. H. 436, 441, 450; *Sweezy v. New Hampshire*, 354 U. S. 234, 236, 246; *Uphaus v. Wyman*, 360 U. S. 72; *Uphaus v. Wyman*, 81 S. Ct. 153, 154, 158 (1960).

The Attorney General is now charged solely with the duty of making investigation of "violations" of the provisions of the subversive activities act (Laws 1957, c. 178, s. 2, *supra*) a function which the same act likewise specifically entrusted to grand juries. Laws 1957, c. 178, s. 1. See RSA 588:2, 8-a (supp.). I cannot avoid the conclusion that this change has substantially altered the whole character of the investigation in a way which renders the present investigation vulnerable under provisions of the Constitutions of New Hampshire and of the United States, more especially since the 1955 Report on Subversive Activities by the Attorney General to the General Court (pp. 9, 61, 204) makes it plain that he regards this defendant as a probable violator of the law. In view of the interpretation placed upon the

1957 act by the majority of the court, an exposition of my views with respect to the constitutional issues would be superfluous.

Appendix B

No. 237, Misc. HUGO DEGREGORY, Appellant, v ATTORNEY GENERAL OF NEW HAMPSHIRE.
368 US 19, 7 L ed 2d 86, 82 S Ct 137.

Appeal from the Supreme Court of New Hampshire.

October 23, 1961. Per Curiam: The judgment is affirmed.

The Chief Justice, Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Brennan dissent.

Same case below, 103 NH 214, 169 A2d 1.

Howard S. Whiteside for appellant.

Gardner C. Turner, Attorney General of New Hampshire, pro se.

Appendix C.

OPINION OF SUPREME COURT OF NEW HAMPSHIRE.

Merrimack,
No. 5298.

WILLIAM MAYNARD, ATTORNEY GENERAL

v.

HUGO DE GREGORY

Argued January 5, 1965.

Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588:8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

William Maynard, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall orally*) for the Attorney General.

Lawrence J. Walsh and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside orally*) for the defendant.

LAMPRON, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588:8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activities. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its govern-

ment against the menace of Communist subversion is firmly established. *Nelson v. Wyman, supra*; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. De Gregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22,

1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following statement: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief, "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in *No. 44 American Committee for Protection of Foreign Born v. Subversive Activities Control Board* [380 U.S. 503], 33 L. W. 4336, and *No. 65 Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board* [380 U.S. 513], 33 L. W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exercise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

Exceptions overruled.

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., concurring: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon § 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory*, *supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

Appendix D

CHAPTER 588.

SUBVERSIVE ACTIVITIES.

588:1 DEFINITIONS. For the purpose of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide*

purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions of governments to be effected through constitutional means.

“Foreign government” means the government of any country or nation other than the government of the United States of America or one of the states thereof.

“Subversive person” means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence, or who is a member of a subversive organization or a foreign subversive organization.

SEDITION.

588:2 FELONIES. It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, or imprisoned for not more than twenty years, or both, at the discretion of the court.

588:3 PENALTY. It shall be a felony for any person after August 1, 1951 to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

588:3-a EVIDENCE OF MEMBERSHIP OR PARTICIPATION. In determining membership or participation in a subversive organization or a foreign subversive organization as defined in this chapter, or knowledge of the purpose or objective of such organization, the jury, under instructions from the court, may consider evidence, if presented, as to whether the accused person to his knowledge:

(1) Has been listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

- (2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;
- (3) Has made himself subject to the discipline of the organization in any form whatsoever;
- (4) Has executed orders, plans, or directives of any kind of the organization;
- (5) Has acted as an agent, courier, messenger, correspondent, organizer, or in any other capacity in behalf of the organization;
- (6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;
- (7) Has been accepted as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;
- (8) Has written, spoken or in any other way communicated by signal, semaphore, sign or in any other form of communication orders, directives, or plan of the organization;
- (9) Has prepared documents, pamphlets, leaflets, books or any other type of publication in behalf of the objectives and purposes of the organization;
- (10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others materials or propaganda of any kind in behalf of the organization;
- (11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

- (12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;
- (13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;
- (14) The enumeration of the above subjects of evidence on membership or participation in a subversive organization or a foreign subversive organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.

588:3-b CONSTRUCTION OF PROVISION. Nothing in the preceding section shall be construed to limit the supervisory power of the court over the admission and exclusion of evidence or over the sufficiency of the evidence as a whole.

588:4 BARRED FROM OFFICE. Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

- (a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;
- (b) filing or standing for election to any public office in the state of New Hampshire.

588:5 DISSOLUTION OF ORGANIZATIONS. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New

Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

588:6 ASSISTANCE FURNISHED. For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of the state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

588:7 RECORDS. The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permission of the attorney general to effectuate the purposes thereof.

588:8 GRAND JURY INQUIRIES. The superior court, when in its discretion it appears appropriate, or when informed by the attorney general that there is information or

evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action.

588:8-a ATTORNEY GENERAL. At any time when the attorney general has information which he deems reasonable or reliable to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the general court the results of this investigation, together with his recommendations, if any, for legislation. In any investigation hereunder the attorney general or any duly authorized member of his staff is authorized to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents and to administer such oaths, and to take such testimony and to make such expenditures within the funds provided as he deems advisable. The provisions of section 7 of this chapter shall be inapplicable to the investigation provided for herein and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes hereof.

LOYALTY.

588:9 EMPLOYMENT. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision, of this state.

588:10 WRITTEN STATEMENTS REQUIRED. Every person and every board, commission, council, department, court or other agency of the state of New Hampshire, or any political subdivision thereof, who or which appoints or employs

or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers, and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

588:11 EXCEPTIONS. The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

588:12 PRESENT EMPLOYEES. Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in

this chapter, namely, any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter. Such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the State of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

588:13 DISCHARGE OF PERSONNEL; HEARING. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the

state classified service shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

588:14 DECLARATIONS OF CANDIDATES. No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavits aforesaid.

588:15 FALSE STATEMENTS. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes

a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 587, RSA.

588:16 TITLE. This chapter may be cited as the "Subversive Activities Act of 1951."